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5 Attorneys for Petitioner
6 SUNOCO, INC.

7
8 STATE WATER RESOURCES CONTROL BOARD
9 STATE OF CALIFORNIA

10 In the Matter of
11 SUNOCO, INC.,

12
13 Petitioner,

14 For Review of Order to Sunoco, Inc. to
Submit Technical Reports in Accordance
15 with Section 13267 of the California
Water Code, Mount Diablo Mercury
16 Mine, Contra Costa County, dated
March 25, 2009

PETITION NO.

**PETITION FOR STAY OF
ACTION**

17
18 Pursuant to California Water Code Section 13320 and Title 23 of the California
19 Code of Regulations §§ 2050 *et seq.*, Petitioner Sunoco, Inc. ("Sunoco" or
20 "Petitioner") hereby petitions the State Water Resources Control Board ("State
21 Board") for review of the "Order To Sunoco, Inc. To Submit Technical Reports In
22 Accordance With Section 13267 of the California Water Code, Mount Diablo
23 Mercury Mine, Contra Costa County" ("Order"), adopted by the California
24 Regional Water Quality Control Board, Central Valley Region" ("Regional
25 Board") dated March 25, 2009. The Order establishes timelines for Sunoco to
26 submit: (1) a potentially responsible party ("PRP") report; (2) a site investigation
27 work plan; and, (3) a site investigation report. Sunoco requests a hearing in this
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1 matter.

2 **I. PETITIONER**

3 The name and address of Petitioner is:

4 Sunoco, Inc.
5 Attn: Lisa A. Runyon, Senior Counsel
6 Sunoco, Inc.
7 1735 Market St., Ste. LL
8 Philadelphia, PA 19103-7583

9 Sunoco can be contacted through its outside legal counsel:

10 John D. Edgcomb
11 Edgcomb Law Group
12 115 Sansome Street, Ste. 700
13 San Francisco, CA 94104
14 jedgcomb@edgcomb-law.com
15 (415) 399-1555

16 **II. ACTION OF THE REGIONAL BOARD TO BE REVIEWED**

17 Sunoco requests that the State Board review the Regional Board's "Order To
18 Sunoco, Inc. To Submit Technical Reports In Accordance With Section 13267 of
19 the California Water Code, Mount Diablo Mercury Mine, Contra Costa County,"
20 which establishes reporting requirements and names Sunoco as a "discharger" with
21 respect to the Mount Diablo Mercury Mine, which is described in the Order only as
22 an "inactive mercury mine on approximately 109 acres on the northeast slope of
23 Mount Diablo in Contra Costa County" (the "Site"). A copy of the Order is
24 attached as Exhibit 1.

25 This Petition for Review is a protective filing, and pursuant to 23 Cal. Code
26 Regs. § 2050.5(d). **Petitioner requests that this Petition and the Petition for**
27 **Stay of Action filed concurrently herewith be held in abeyance by the State**
28 **Board until further notice from Sunoco.**

1 **III. DATE OF THE REGIONAL BOARD ACTION**

2 The Regional Board adopted the Order on March 25, 2009.

3 **IV. STATEMENT OF REASONS WHY THE REGIONAL BOARD'S**
4 **ACTION IS INAPPROPRIATE OR IMPROPER**

5 As set forth more fully below, Sunoco seeks State Board review of the Order
6 because the action of the Regional Board with respect to Sunoco is illegal and
7 should be revoked or amended in that the Order: 1) is improperly vague and
8 ambiguous in its description of the Site, making compliance with certainty
9 impossible and unnecessary compliance efforts likely; 2) requires preparation of a
10 non-technical PRP report, which is beyond the scope of the Regional Board's cited
11 statutory authority; 3) apparently requires Sunoco to prepare a PRP report and
12 technical reports for large areas of a Site where it was not a "discharger," and
13 without providing the required reference to the evidence supporting those
14 requirements, meaning the Regional Board is again acting inconsistent with and
15 beyond the scope of its cited statutory authority; and 4) fails to identify known
16 PRPs as respondents on the Order and make them also responsible for furnishing
17 the required reports.

18 **A. Background.**

19 The Order asserts that the "Mt. Diablo Mercury Mine is an inactive mercury
20 mine on approximately 109 acres on the northeast slope of Mount Diablo in Contra
21 Costa County." (See Declaration of John D. Edgcomb In Support of Petition for
22 review and Petition for Stay of Action ("Edgcomb Decl."), Exhibit 1, Order, at p.
23 1.) The Order further asserts that "[p]resently, the mine consists of an open
24 exposed cut and various inaccessible underground shafts, adits and drifts.
25 Extensive waste rock piles and mine tailings cover the hill slope below the open
26 cut, and several springs and seeps discharge from the tailings-covered area." (Id.)
27 The Order also alleges that "[a]cid mine drainage containing elevated levels of
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1 mercury and other metals are being discharged to a pond that periodically
2 overflows into Horse and Dunn Creeks” and that “[f]urther site investigation is
3 required to assess the extent of pollution discharged from the mine site and to
4 evaluate the remedial options to mitigate the discharge.” (Id.)

5 With respect to Sunoco, the Order alleges that “Cordero Mining Company,
6 owned by Sunoco, Inc. in the 1950s, operated the Mt. Diablo Mine from
7 approximately 1954 to 1956 and was responsible for the past discharge of mining
8 waste.” (Edgcomb Decl., Ex. 1, Order, at p. 1.) The Order also alleges that “. . .
9 Sunoco Inc. is subject to this Order because of its ownership interest in the Cordero
10 Mining Company, which operated Mount Diablo Mercury Mine and discharged
11 waste to waters of the state. Therefore it is a ‘person[s] who [have] discharged . . .
12 waste’ within the meaning of CWC section 13267.” (Id. at p. 2; brackets in
13 original.)

14 The Order also identifies Jack and Carolyn Wessman (“Wessmans”) as the
15 current owners of the Site, but does not order them to participate in the preparation
16 of the required reports. (Edgcomb Decl., Ex. 1, Order, at p. 1.) The Order does
17 not identify any of the other known former owners or operators of the Site as
18 respondents, but does state that if additional PRPs are identified in the required
19 reports, they may be added to this Order or future orders. (Id. at p. 2).

20 The Order establishes the following Reporting Requirements related to the
21 Site, which are purportedly supported by California Water Code section 13267
22 (“WC § 13267”):

- 23 1. A report identifying prior site owners and operators, and their current
24 corporate status (“PRP report”);
- 25 2. A site investigation work plan to identify at the mine site the sources of
26 mercury contamination to surface water and groundwater, and to assess
27 the lateral and vertical extent of pollution; and
28

- 1 3. A site investigation report evaluating the data collected and proposing
2 interim remedial actions to inhibit on-going and future discharges to
3 surface and groundwater. (Id. at p. 2.)

4 **B. Legal Bases for Sunoco's Challenge to the Order.**

5 **1. The Order's Site Description Is Vague and Ambiguous.**

6 The Order's description of the Site is vague and ambiguous, making
7 Sunoco's ability to comply with it impossible, and also potentially causing Sunoco
8 to over-perform work not intended to be performed by the Regional Board, without
9 further clarification. As noted above, the Order describes the Site only as an
10 inactive mercury mine on approximately 109 acres on the northeast slope of Mount
11 Diablo. However, the Order provides neither a map nor any Assessor Parcel
12 Number(s) ("APN") that identify the specific Site boundaries. After the Regional
13 Board issued the Order, on behalf of Sunoco, the Edgcomb Law Group ("ELG")
14 requested either a map or APNs from the Regional Board to determine the specific
15 "Site" boundaries. (See Edgcomb Decl., Ex. 2). In response, the Regional Board
16 provided a reference to APN 78-060-008-6. (Id.) Research of that APN by
17 Sunoco's title research vendor, however, revealed that it is no longer used by the
18 County Recorder. Moreover, in further investigating this APN, Sunoco's title
19 research vendor informed ELG there is some indication that APN 78-060-008-6
20 became APN 078-060-034. However, according to the relevant Assessor's Map,
21 that parcel consists of only 96.65 acres, not the "109 acres" referenced in the
22 Order. (See Edgcomb Decl., Ex 3). Moreover, Sunoco's title research vendor
23 located an older Assessor's Map which indicated that APN 78-060-008-6
24 referenced by the Regional Board refers to a parcel that was divided into smaller
25 parcels that are now APNs 078-060-013, 078-060-033, and 078-060-032. (See
26 Edgcomb Decl. Ex. 4). But these parcels total over 120 acres, and do not appear to
27 cover what one might consider to be the Mt. Diablo Mercury Mine area. (Id.)
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1 In summary, insufficient information has been given in the Regional Board's
2 Order to enable Sunoco to comply with the Order with an adequate level of
3 confidence, since the Order requires investigation of a Site without clearly defined
4 boundaries. Moreover, the uncertainty regarding the Site boundaries raises the
5 possibility that Sunoco may needlessly over-investigate property that the Regional
6 Board did not intend be included within its "Site." Accordingly, Sunoco requests
7 the State Board grant relief in part by declaring that the Order does not provide the
8 required, clearly defined Site boundaries, and suspending its enforcement until the
9 Regional Board withdraws or amends the Order to include information establishing
10 clearly defined site boundaries. The newly defined Site boundaries should also
11 reflect the limited area of Cordero's operations, as reflected in Section IV.B.3 of
12 this Petition.

13 **2. The Regional Board Does Not Have Legal Authority to**
14 **Require Sunoco to Submit a "PRP Report."**

15 The State Board must order the Regional Board to amend the Order by
16 removing the requirement that Sunoco to prepare a PRP report, as no legal
17 authority exists for this requirement. The Order states that: "[p]ursuant to
18 California Water Code (CWC) section 13267, Sunoco, Inc. is hereby required to
19 submit...a report identifying prior site owners and operators, and their current
20 corporate status...."

21 However, WC § 13267, the only legal authority cited by the Regional Board
22 for its Order, does not provide it with legal authority to require Sunoco to submit a
23 PRP report. As the Order notes, WC § 13267 provides in pertinent part:

24 "(b)(1) In conducting an investigation specified in subdivision (a), the
25 regional board may require that any person who has
26 discharged...waste within its region...shall furnish, under penalty of
27 perjury, technical or monitoring program reports which the
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1 regional board requires. (WC § 13267(b); emphasis added.)
2 Sunoco contends that the required “PRP report” is not a “technical or monitoring
3 program report” that WC § 13267 authorizes the Regional Board to require be
4 produced by alleged dischargers to investigate Site conditions, but is instead a legal
5 report containing information regarding the legal status of past owners and
6 operators. As such, it falls outside the scope of reports the Regional Board is
7 authorized to require be furnished under WC § 13267.

8 In addition to being unauthorized, the PRP report requirement is also
9 impermissibly vague and ambiguous and, again, presents improper risk of non-
10 compliance by Sunoco. Specifically, Sunoco is unaware of any Regional Board or
11 other State regulations or other guidelines that identify the objective standards to
12 be followed in preparing a PRP report. Thus, like the vague Site description
13 discussed above, the absence of information makes compliance with the PRP
14 report requirement of the Order difficult to impossible. For example, on what
15 objective basis would the Regional Board determine the adequacy of the PRP
16 report required to be submitted by Sunoco? Without clear requirements,
17 enforcement of this Order provision could be arbitrary and capricious.

18 Absent a legal basis, or any objective set of performance criteria, the PRP
19 report requirement in the Order is improper. Sunoco requests the State Board grant
20 relief and order the Regional Board to amend the Order to remove this
21 requirement.

22 **3. Sunoco Should Not Have Been Named as a Discharger or**
23 **Operator Over the Entire Site Referenced in the Order**
24 **Because Cordero’s Operations Are Divisible.**

25 The Order’s requirements that Sunoco submit a work plan and investigative
26 report related to the Site are substantially overbroad, given that Sunoco’s factual
27 research to date demonstrates that Cordero Mining Company (“Cordero”) operated
28 on only a small area on Mount Diablo during its approximately one year of

1 intermittent operations (approx. December 1954-December 1955). Sunoco is
2 unwilling, and has no legal obligation, to accept liability for the discharges of
3 others on the Site where it never operated.

4 The Order states that the Site is comprised of approximately 109 acres, but
5 even based on conservative estimates, Cordero's operations and discharges
6 occurred on less than 1% of that number of acres. In particular, the Order makes
7 specific reference to the mine consisting "of an open exposed cut and various
8 inaccessible underground shafts, adits and drifts. Extensive waste rock piles and
9 mine tailings cover the hill slope below the open cut, and several springs and seeps
10 discharge from the tailings-covered area." (Edgcomb Decl., Ex. 1, Order, at p.1.)
11 Yet, historical mine plans, maps, aerial photographs and other records demonstrate
12 that Cordero's mining activities, which the Order contends occurred from
13 "approximately 1954 to 1956," came long after those of Bradley Mining Company
14 and other PRPs between 1867 and 1952, who excavated the "open exposed cut"
15 portion of the mine referenced in the Order until it was partially covered by
16 landslides. (See, e.g. Id., Ex. 5-10). Therefore, Cordero did not "operate" that
17 portion of the Site and has no "discharger" liability for it. The same information
18 reflects that Cordero's mining activities occurred to the north of, and without
19 discharge to, the "[e]xtensive waste rock piles and mine tailings cover[ing] the hill
20 slope below the open cut." (Id., Ex. 1, Order, at 1). Thus, the Order improperly
21 requires Sunoco to prepare technical reports under WC section 13267 concerning
22 large areas of concern to the Regional Board where Cordero was not a
23 "discharger."

24 Given Cordero's small, divisible "discharge" footprint at the mine site,
25 Sunoco objects to the Order's finding that Cordero "operated the Mt. Diablo Mine
26 from approximately 1954 to 1956" (Edgcomb Decl., Ex. 1, Order, at 1). Cordero's
27 area of operation did not include the open pit mine, and the waste rock piles and
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1 mine tailings covering the hill slope below it, that are identified as significant areas
2 of environmental concern in the Order. Moreover, the Regional Board has not
3 presented any evidence that any materials discharged by Cordero resulted in the
4 discharge of any waste sufficient to trigger the authority to require the furnishing
5 of technical reports under WC section 13267.

6 On that basis, Sunoco also objects to the Order's requirement that it submit:

- 7 • a site investigation work plan to identify, across the entire "mine site,"
8 the sources of mercury contamination to surface water and groundwater, and to
9 assess the lateral and vertical extent of pollution; and
- 10 • a "site" investigation report evaluating the data collected, and
11 proposing interim remedial actions to inhibit on-going and future discharges to
12 surface and groundwater.

13 A reading of the plain language of the California Water Code reveals that a
14 "discharger" is only liable for investigating areas to which it discharged. A
15 "discharger" is not liable for investigating and remediating the geographically
16 distant and unrelated discharges of other PRPs. Applied here, that legal principle
17 means Sunoco cannot be required to investigate sources of mercury contamination
18 unrelated to Cordero's activities at the Site, including the open pit mine, and the
19 waste rock piles and mine tailings covering the hill slope below it.¹

20 Moreover, as the Regional Board acknowledges in the Order, WC § 13267
21 requires the Regional Board to provide Sunoco "with a written explanation with
22 regard to the need for the reports, and shall identify the evidence that supports
23 requiring that person to provide the reports." (WC § 13267(b); emphasis added.)
24 But the Regional Board Order fails to identify any evidence in the Order in support
25 of its claim that Cordero "operated the Mt. Diablo Mine." Thus, the Order fails to
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27 ¹ Sunoco continues to investigate the facts underlying this divisibility issue, having
28 had less than 30 days to do so since the issuance of the Order, and will supplement
the record with relevant additional documents and information at an appropriate
time.

1 meet this requirement of WC § 13267(b). Sunoco submits that the Regional Board
2 cannot meet this requirement since the relevant evidence contradicts this claim.
3 The Regional Board did not meet or confer with Sunoco prior to issuing its Order.
4 Accordingly, Sunoco was unable to present its evidence contradicting the
5 unsupported factual findings made by the Regional Board in the Order prior to its
6 issuance.

7 Documentary evidence obtained by Sunoco to date indicates that Cordero
8 operated solely from a mine shaft sunk by contractors operating under contract to
9 the United States Department of Interior's Defense Minerals Exploration
10 Administration ("DMEA") (see Edgcomb Decl., Ex. 11-13, DMEA contract and
11 related documents). The DMEA shaft was located north of, and is divisible from,
12 the open pit, shafts, adits, and drifts mined extensively by Bradley Mining
13 Company between 1936-1947 and others before and afterwards. (See Id., Ex. 5-
14 10).

15 On the basis of this evidence, Sunoco requests that the State Board grant
16 relief and order that the Regional Board amend its Order to: 1) provide reference to
17 the evidence on which it relies to order Sunoco to furnish technical reports under
18 WC section 13267 and to either rescind the Order in its entirety or limit the Order's
19 application to the areas where the evidence demonstrates that Cordero operated and
20 discharged waste of a manner sufficient to trigger the application of WC section
21 13267; and 2) find that Sunoco cannot be ordered to furnish technical reports for
22 areas where there is no evidence that Cordero conducted any operations.

23 **4. The Regional Board Should Add Other PRPs to the**
24 **Order and Require Their Participation.**

25 After requiring the Regional Board to limit Sunoco's responsibility for
26 furnishing technical reports to the areas on which it can present evidence that
27 Cordero operated and discharged waste of a nature sufficient to trigger the
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1 application of WC section 13267, Sunoco further requests that the State Board
2 require the Regional Board to add other known PRPs for any such area identified
3 in the revised Order and require them to cooperate with Sunoco in the preparation
4 and funding of the required technical reports. At this time, those other PRPs would
5 include, at a minimum, the DMEA and its contractors, which the relevant evidence
6 indicates funded and/or conducted mining operations in the same area as Cordero.
7 (See Edgcomb Decl., Ex. 10-12). DMEA has already been found liable under
8 CERCLA in federal court as a responsible party under similar circumstances at
9 another mine site. (See Ex. 13, copy of relevant, excerpted 2003 District Court of
10 Idaho decision). Other PRPs would include the Wessmans, whom the existing
11 Order identifies as the current owners of the Site.

12 As for other areas of the Mt. Diablo Mine Site where Cordero did not
13 operate, as noted in its Order, the Regional Board can issue new investigation
14 orders under WC section 13267 to other PRPs, such as Bradley Mining Company,
15 to furnish technical reports. Such areas include, but are not limited to, the open pit
16 mine and the waste rock piles and mine tailings covering the hill slope below it that
17 are incorrectly referenced as being within the scope of the current Order to Sunoco.

18 **V. THE MANNER IN WHICH PETITIONER HAS BEEN AGGRIEVED**

19 Sunoco has been aggrieved by the Regional Board's actions because Sunoco
20 will be subjected to provisions of an arbitrary and capricious Order unsupported by
21 the evidence in the record or applicable legal authority. Absent a better definition
22 of the Site, Sunoco is subject to an inability to comply and a potentially arbitrary
23 and capricious enforcement of the Order. Sunoco is also being required to submit
24 a PRP report not authorized to be required by the relevant statute.

25 The Regional Board's Order as it pertains to Site description and the
26 required PRP report is also vague and ambiguous because it provides no objective
27 standards to determine Sunoco's compliance, leaving Petitioner to guess as to the
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1 scope of the Regional Board's requirements, in violation of Sunoco's due process
2 rights. (Connally v. General Construction Co., 269 U.S. 385, 391 (1926) ("[A]
3 statute which either forbids or requires the doing of an act in terms so vague that
4 men of common intelligence must necessarily guess at its meaning and differ as to
5 its application, violates the first essential of due process of law"); Gatto v. County
6 of Sonoma, 98 Cal. App. 4th 744, 773-774 (2002); Papachristou v. City of
7 Jacksonville, 405 U.S. 156, 162 (1972) (law was unconstitutionally vague for
8 failure to give fair notice of what constituted a violation; "all persons are entitled to
9 be informed as to what the State commands or forbids").)

10 Moreover, as a result of being named the sole discharger at the Site, and
11 made solely responsible for furnishing all of the requested technical reports
12 required in the Order covering the entire Site, despite contrary evidence regarding
13 the divisible nature of Cordero's Site activities, Sunoco will be forced to shoulder
14 significant and inappropriate costs of compliance, a heavy burden of regulatory
15 oversight, and other potentially serious economic consequences. Further, by
16 naming Sunoco as the sole discharger for the entire site, at least three other PRPs
17 known to the Regional Board, namely Bradley Mining Company, Jack and Carolyn
18 Wessman, and the U.S. Government (DMEA), (which either caused the majority of
19 mercury contamination or own portions of the Site), are unfairly avoiding their
20 fair share of costs in conducting the required investigations.

21 VI. STATE BOARD ACTION REQUESTED BY PETITIONER

22 As discussed above, Sunoco requests that this Petition and its concurrently
23 filed Petition for Stay be held in abeyance. If it becomes necessary for Sunoco to
24 pursue this Petition and its Petition for Stay of Action, Sunoco will request that the
25 State Board stay enforcement of the Order and determine that the Regional Board's
26 adoption of the Order was arbitrary and capricious or otherwise inappropriate and
27 improper, and will request that the State Board amend the Order as follows: (1)
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1 provide an accurate description of the "Site" boundaries so that Sunoco can
2 comply with the Order; (2) delete the requirement that Sunoco furnish a PRP
3 report; (3) require references to the evidence on which the Regional Board relies to
4 name Sunoco as a discharger over whatever area it identifies as the "Site" covered
5 by the Order; (4) limit the scope of its Order by changing the area identified as the
6 "Site" to be limited to areas where it can establish through identified evidence that
7 Cordero discharged waste of a nature sufficient to trigger the application of WC
8 section 13267; and (5) name other known PRPs for any area so identified,
9 including but not limited to the United States (DMEA), and Jack and Carolyn
10 Wessman, and require them to participate in any required investigations.

11 **VII. STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF** 12 **LEGAL ISSUES RAISED IN THE PETITION**

13 For purposes of this protective filing, the Statement of Points and
14 Authorities is subsumed in Sections IV and V of this Petition. If Sunoco elects to
15 pursue this Petition, Sunoco reserves the right to file a Supplemental Statement of
16 Points and Authorities, including references to the complete administrative record
17 and other legal authorities and factual documents and testimony, which Sunoco is
18 still assembling. Sunoco also reserves its right to supplement its evidentiary
19 submission and reiterates its request for a hearing to allow the State Board to
20 consider testimony, other evidence, and argument.

21 **VIII. STATEMENT REGARDING SERVICE OF THE PETITION ON** 22 **THE REGIONAL BOARD**

23 A copy of this Petition is being sent to the Regional Board, to the
24 attention of Pamela C. Creedon, Executive Director by email and U.S. Mail. By
25 copy of this Petition, Sunoco is also notifying the Regional Board of Sunoco's
26 request that the State Board hold the Petition and the concurrently filed Petition for
27 Stay of Action in abeyance.

1 **IX. STATEMENT REGARDING ISSUES PRESENTED TO THE**
2 **REGIONAL BOARD/REQUEST FOR HEARING**

3 The substantive issues and objections raised in this Petition were not raised
4 before the Regional Board before it acted in issuing the Order because Sunoco had
5 no notice from the Regional Board that it was issuing the Order, Sunoco was not
6 provided with a draft version of the Order, Sunoco was not provided with any
7 opportunity to comment upon a draft version of the Order or to appear before the
8 Board to present comments.

9 Sunoco requests a hearing in connection with this Petition, should Sunoco
10 activate it from its current "in abeyance" status.

11 For all the foregoing reasons, if Sunoco pursues its appeal, Sunoco
12 respectfully requests that the State Board review the Order and grant the relief as
13 set forth above.
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3 Respectfully submitted,

4 DATED: April 24, 2009

5 EDGCOMB LAW GROUP

6
7 By: 

8 John D. Edgcomb
9 jedgcomb@edgcomb-law.com
10 Attorneys for Petitioner
11 SUNOCO, INC.
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6 SUNOCO, INC.

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8 STATE WATER RESOURCES CONTROL BOARD

9 STATE OF CALIFORNIA

10 In the Matter of

11 SUNOCO, INC.,

12
13 Petitioner,

14 For Review of Order to Sunoco, Inc. to
Submit Technical Reports in Accordance
15 with Section 13267 of the California
Water Code, Mount Diablo Mercury
16 Mine, Contra Costa County, dated
March 25, 2009

PETITION NO.

**DECLARATION OF JOHN D.
EDGCOMB IN SUPPORT OF
PETITION FOR REVIEW AND
PETITION FOR STAY OF
ACTION**

17
18 I, the undersigned John D. Edgcomb, declare as follows:

19 1. I am an attorney admitted to practice law in the State of
20 California. Edgcomb Law Group ("ELG") are acting as attorneys for respondent
21 Sunoco, Inc. ("Sunoco") in connection with the response of Sunoco to the "Order
22 To Sunoco, Inc. To Submit Technical Reports In Accordance With Section 13267 of
23 the California Water Code, Mount Diablo Mercury Mine, Contra Costa County"
24 ("Order"), adopted by the California Regional Water Quality Control Board,
25 Central Valley Region" ("Regional Board") dated March 25, 2009.

26 2. I have personal knowledge of the facts set forth herein or am
27 familiar with such facts from: 1) my personal involvement in all aspects of this
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1 matter since 2008; 2) my review of the files, records and aerial; photos obtained
2 from public agencies and other public sources of information.

3 3. Attached hereto as Exhibit 1 is a true and correct copy of the
4 Regional Board's March 25, 2009 Order.

5 4. Attached hereto as Exhibit 2 is a true and correct copy of email
6 correspondence between the Edgcomb Law Group ("ELG") and the Regional Board
7 dated April 3, 2009.

8 5. Attached hereto as Exhibit 3 is a true and correct copy of
9 Assessor's Map, Book 78, Page 6 Contra Costa County, CA, last modified in July
10 1992.

11 6. Attached hereto as Exhibit 4 is a true and correct copy of an
12 older version of Assessor's Map, Book 78, Page 6 Contra Costa County, CA.

13 7. Attached hereto as Exhibit 5 is a true and correct copy of a
14 topographic map of Mount Diablo Mine dated January 1953, obtained from the
15 Department of the Interior, U.S. Geological Survey ("USGS").

16 8. Attached hereto as Exhibit 6 is a true and correct copy of a
17 topographic map of Mount Diablo Mine reflecting changes to the site after work by
18 the Defense Minerals Exploration Administration ("DMEA").

19 9. Attached hereto as Exhibit 7 is a true and correct copy of a map
20 of the underground workings of Bradley Mining Company at the Mount Diablo
21 Mine Site, obtained from the Department of the Interior, USGS.

22 10. Attached hereto as Exhibit 8 is a true and correct copy of a map
23 purporting to depict the underground workings of the DMEA and its contractors
24 and Cordero Mining Company at the Mount Diablo Mine Site, obtained from the
25 Department of the Interior, USGS.

26 11. Attached hereto as Exhibit 9 is a true and correct copy of two
27 aerial photographs of the site, the first dated October 9, 1952 and the second dated
28 May 16, 1957.

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1 12. Attached hereto as Exhibit 10 is a true and correct copy of a
2 DMEA "Report of Examination by Field Team Region III" dated March 13, 1953,
3 obtained from the Department of Interior, USGS.

4 13. Attached hereto as Exhibit 11 is a true and correct copy of the
5 Exploration Project Contract between Ronnie B. Smith, Jene Harper and James
6 Dunnigan and the U.S. Department of the Interior DMEA for the Mt. Diablo
7 Mercury Mine, dated June 5, 1953. This document was obtained from the
8 Department of Interior, USGS.

9 14. Attached hereto as Exhibit 12 is a true and correct copy of the
10 Assignment of Lease signed by Ronnie Smith, Jene Harper and James Dunnigan
11 and John Johnson and John Jonas for the Mt. Diablo Mercury Mine, dated
12 November 1, 1953. This document was obtained from ELG's title research vendor.

13 15. Attached hereto as Exhibit 13 is a true and correct copy of the
14 cover page and relevant excerpts from *Coeur D'Alene Tribe v. Asarco*
15 *Incorporated*, 280 F. Supp. 1094 (D. Idaho 2003).

16
17 I declare under penalty of perjury under the laws of the State of California
18 and the United States of America that the foregoing is true and correct.

19 Executed this 24th day of April, 2009 in San Francisco, California.

20
21 By: 
22 John D. Edgcomb

EXHIBIT 1



Linda S. Adams
Secretary for
Environmental
Protection

California Regional Water Quality Control Board
Central Valley Region
Karl E. Longley, ScD, P.E., Chair



11020 Sun Center Drive #200, Rancho Cordova, California 95670-6114
Phone (916) 464-3291 • FAX (916) 464-4645
<http://www.waterboards.ca.gov/centralvalley>

RECEIVED

MAR 31 2009

LISA A. RUNYON

Arnold
Schwarzenegger
Governor

25 March 2009

Lisa A. Runyon, Senior Counsel
Sunoco, Inc.
1735 Market Street. Ste. LL
Philadelphia PA 19103-7583

Jack and Carolyn Wessman
PO Box 949
Clayton, CA 94517

**ORDER TO SUNOCO INC. TO SUBMIT TECHNICAL REPORTS IN ACCORDANCE WITH
SECTION 13267 OF THE CALIFORNIA WATER CODE, MOUNT DIABLO MERCURY MINE,
CONTRA COSTA COUNTY**

**YOU ARE LEGALLY OBLIGATED TO RESPOND TO THIS ORDER, PLEASE READ THIS
ORDER CAREFULLY.**

Mt. Diablo Mercury Mine is an inactive mercury mine on approximately 109 acres on the northeast slope of Mount Diablo in Contra Costa County. Acid mine drainage containing elevated levels of mercury and other metals are being discharged to a pond that periodically overflows into Horse and Dunn Creeks. Further site investigation is required to assess the extent of pollution discharged from the mine site and to evaluate the remedial options to mitigate the discharge. This site investigation and subsequent remedial option evaluation are needed to select the remedial option to restore the impacted waters of the state and to protect public health and the environment.

Presently, the mine consists of an exposed open cut and various inaccessible underground shafts, adits, and drifts. Extensive waste rock piles and mine tailings cover the hill slope below the open cut, and several springs and seeps discharge from the tailings-covered area. Three surface impoundments at the base of the tailings capture most spring flow and surface runoff. However, during winter the ponds commonly spill into Horse and Dunn Creeks, which drain to the Marsh Creek watershed.

Jack and Carolyn Wessman, who are the current owners of the Mount Diablo Mercury Mine property and are considered to be dischargers, have made some improvements to reduce surface water exposure to tailings and waste rock, including the construction of a clean fill cap was over parts of the tailings/waste rock piles. Although improvements have been made without an engineering design or approved plan, these improvements may have reduced some of the impacts from the mine site. However, discharges that contain elevated mercury levels continue to impact the site and site vicinity.

Cordero Mining Company, owned by Sunoco, Inc. in the 1950s, operated the Mt. Diablo Mine from approximately 1954 to 1956 and was responsible for the past discharge of mining waste. Cordero was dissolved in 1975. Because Cordero Mining Company operated the mine, and due to the interrelationship between Sunoco and Cordero Mining Company, the United States

California Environmental Protection Agency

Environmental Protection Agency (USEPA), Region IX, named Sunoco Inc. a responsible party for Mt. Diablo Mine site in the Unilateral Administrative Order for the Performance of a Removal Action, USEPA Docket No. 9-2009-02. Sunoco, Inc. is considered a discharger at this site.

Pursuant to California Water Code (CWC) section 13267, Sunoco, Inc. is hereby required to submit the following reports:

1. **By 1 June 2009**, a report identifying prior site owners and operators, and their current corporate status;
2. **By 1 July 2009**, a site investigation work plan to identify at the mine site the sources of mercury contamination to surface water and groundwater, and to assess the lateral and vertical extent of pollution; and
3. **By 1 November 2009**, a site investigation report evaluating the data collected and proposing interim remedial actions to inhibit on-going and future discharges to surface and groundwater.

Information in these reports may be used to set time schedules and/or identify additional responsible parties who may be added to this or future orders. Also, please submit a copy of all reports to Ms. Jerelean Johnson at USEPA, Region 9 in San Francisco.

CWC section 13267 states, in part:

(b)(1) In conducting an investigation . . . , the regional board may require that any person who has discharged, discharges, or is suspected of having discharged or, discharging, or who proposes to discharge waste within its region . . . shall furnish, under penalty of perjury, technical or monitoring program reports which the regional board requires. The burden, including costs, of these reports shall bear a reasonable relationship to the need for the report and the benefits to be obtained from the reports. In requiring those reports, the regional board shall provide the person with a written explanation with regard to the need for the reports, and shall identify the evidence that supports requiring that person to provide the reports.

A discharger has a legal obligation to investigate and remediate contamination. As described above, Sunoco Inc. is subject to this Order because of its ownership interest in the Cordero Mining Company, which operated Mount Diablo Mercury Mine and discharged waste to waters of the state. Therefore, it is a "person[s] who [have] discharged ... waste" within the meaning of CWC section 13267.

The reports are necessary for the reasons described in this Order, to assure protection of waters of the state, and to protect public health and the environment. Failure to submit the required reports by their due dates may result in additional enforcement action, which may include the imposition of administrative civil liability pursuant to CWC section 13268. CWC section 13268 states, in part:

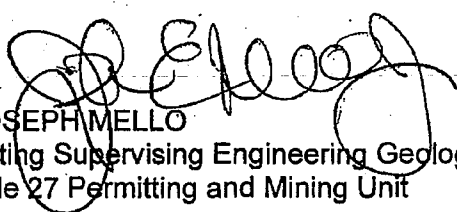
(a)(1) Any person failing or refusing to furnish technical or monitoring program reports as required by subdivision (b) of Section 13267 . . . or falsifying any information provided therein, is guilty of a misdemeanor and may be liable civilly in accordance with subdivision (b). (b)(1) Civil liability may be administratively imposed by a regional board in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 for a violation of subdivision

(a) in an amount which shall not exceed one thousand dollars (\$1,000) for each day in which the violation occurs.

Any person aggrieved by this action of the Central Valley Regional Water Board may petition the State Board to review the action in accordance with CWC section 13320 and California Code of Regulations, title 23, section 2050. The State Water Board must receive the petition by 5:00 p.m., 30 days after the date of this Order, except that if the thirtieth day following the date of this Order falls on a Saturday, Sunday, or state holiday, the petition must be received by the State Water Board by 5:00 p.m. on the next business day. Copies of the law and regulations applicable to filing petitions may be found on the Internet at: http://www.waterboards.ca.gov/public_notices/petitions/water_quality or will be provided upon request.

Reimbursement of the Central Valley Water Board for reasonable costs associated with oversight of the investigation and remediation of the site will be required. Information will be provided in the next several weeks on the cost recovery program.

If you have any questions, please contact Ross Atkinson at (916) 464-4614 or via e-mail at ratkinson@waterboards.ca.gov.



JOSEPH MELLO
Acting Supervising Engineering Geologist
Title 27 Permitting and Mining Unit

cc: Patrick Palupa, Office of the Chief Counsel, SWRCB, Sacramento
California Dept of Parks and Recreation, Bay Area Dist., San Francisco
Jerelean Johnson, Site Assessment, Superfund Div. USEPA Region 9, San Francisco
Larry Bradfish, Asst. Regional Counsel, USEPA Region 9, San Francisco
Janet Yocum, On-Scene Coordinator, USEPA Region 9, San Francisco
R. Mitch Avalon, Contra Costa County Flood Control, Martinez
William R. Morse, Sunoco, Inc. Philadelphia, PA

EXHIBIT 2

David Chapman

From: Ross Atkinson [ratkinson@waterboards.ca.gov]
Sent: Friday, April 03, 2009 4:34 PM
To: David Chapman
Subject: 3/25/2009 Order to Sunoco Inc. to Submit Technical Reports Re:Mount Diablo Mercury Mine

David -

Our files are incomplete on this site and at this time the Regional Water Board does not have a complete property map for Mount Diablo Mine.

The 109 acres in the Order refers to the approximately 109 acres originally sold to Mr. Wessman (assessor parcel #78060008-6).

If further investigation determines that nearby property was disturbed by mining and contributes to surface water contamination, then that property and it's past and present owners or operators can be added to the Order or future Orders. Our goal is to identify all potentially responsible parties and include them in a cleanup plan.

Hope this helps, please feel free to contact me with any questions.

I will be out of the office on Monday, I will be in the office all day Tuesday.

Thanks

Ross

Ross Atkinson
Associate Engineering Geologist
Waste Discharge to Land Unit
Central Valley RWQCB - Sacramento
ph. (916) 464-4614
email: ratkinson@waterboards.ca.gov

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>>> "David Chapman" <dchapman@edgcomb-law.com> 4/3/2009 10:58 AM >>>

Dear Mr. Atkinson,

My name is David Chapman and I am an attorney with Edgcomb Law Group ("ELG") in San Francisco.

ELG is outside counsel for Sunoco, Inc. ("Sunoco"), and is representing Sunoco in relation to the California Regional Water Quality Control Board's ("CRWQCB's") "Order to Sunoco Inc. To Submit Technical Reports In Accordance With Section 13267 Of The California Water Code, Mount Diablo Mercury Mine, Contra Costa County" ("Order") dated March 25, 2009.

The Order provides in the final paragraph that you are the contact person in the event Sunoco has any questions.

The purpose of this email is to request from you a map of the Mt. Diablo Mercury Mine ("Site").

According to the Order, the "Mt. Diablo Mercury Mine is an inactive mercury mine on approximately 109 acres on the northeast slope of Mount Diablo in Contra Costa County." (Emphasis added.)

Could you please forward to me at your earliest convenience a map (or give APN's) reflecting what, exactly, the CRWQCB contends is the "mine site," so that Sunoco has a comprehensive understanding regarding the area to which the Order applies.

Please do not hesitate to contact me via email or at the number listed below should you have any questions concerning the above.

I appreciate your assistance in this matter and thank you in advance for your anticipated cooperation.

Very truly yours,

David

David T. Chapman # Edgcomb Law Group

115 Sansome St., Suite 700 San Francisco, CA 94104

Direct Dial: 415.399.1943 Facsimile: 415.399.1885

Email: dchapman@edgcomb-law.com <<mailto:dchapman@edgcomb-law.com>>

Web: www.edgcomb-law.com <<http://www.edgcomb-law.com>>

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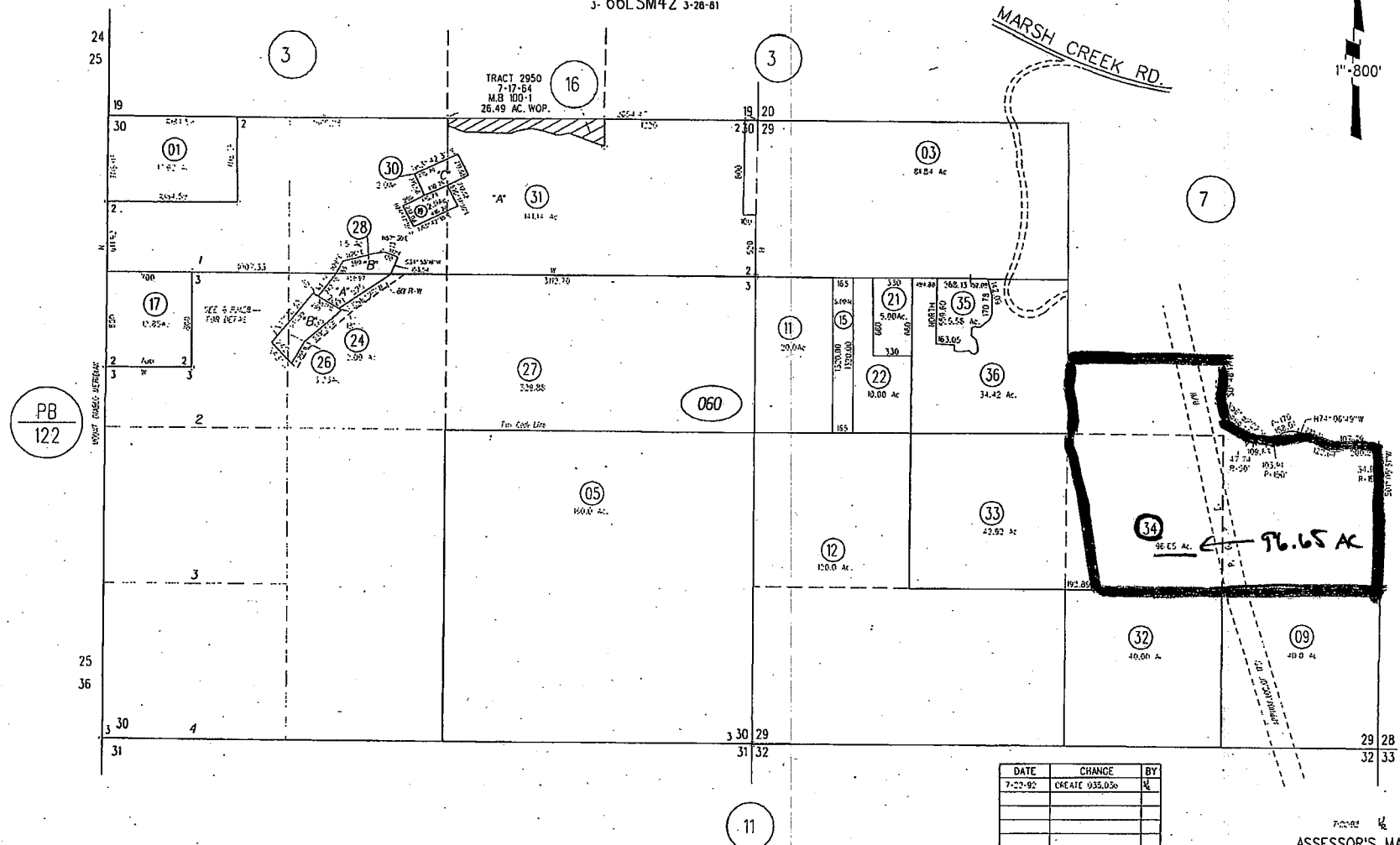
P Please consider the effects on the environment before printing this e-mail.

EXHIBIT 3

SEC 30 & POR SEC 29 T1N R1E MDBM

1-1969 6P.M.28 -12-12-68
2- 14P.M.47 11-27-70
3- 66LSM42 3-28-81

TAX CODE AREA



DATE	CHANGE	BY
7-22-92	CREATE 035,036	1/2

EXHIBIT 4

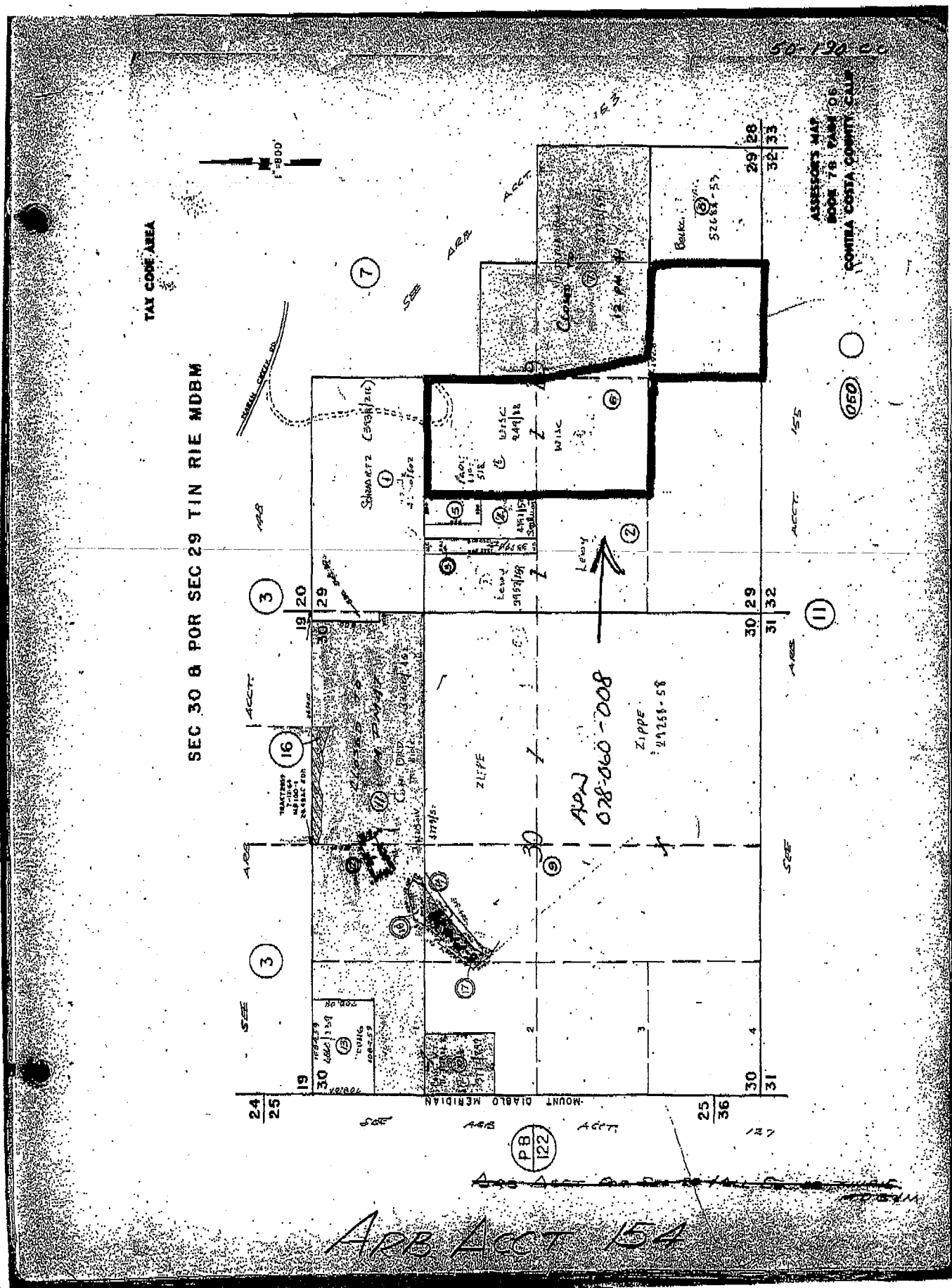


EXHIBIT 5

DAK-2448
(MERCURY)

UNITED STATES DEPARTMENT OF THE INTERIOR
GEOLOGICAL SURVEY



MOUNT DIABLO MINE, CONTRA COSTA COUNTY, CALIFORNIA

Geology and topography by E. H. Phillips, J. E. Macintosh, and D. B. Smith, jointly 1932.

EXHIBIT 6

[illegible]

100 50 0 100 200 300

FEET

Contour interval 10 feet.
Datum is mean sea level.

APPROXIMATE MEAN
DECLINATION, 1953

EXHIBIT 7

EXHIBIT 8

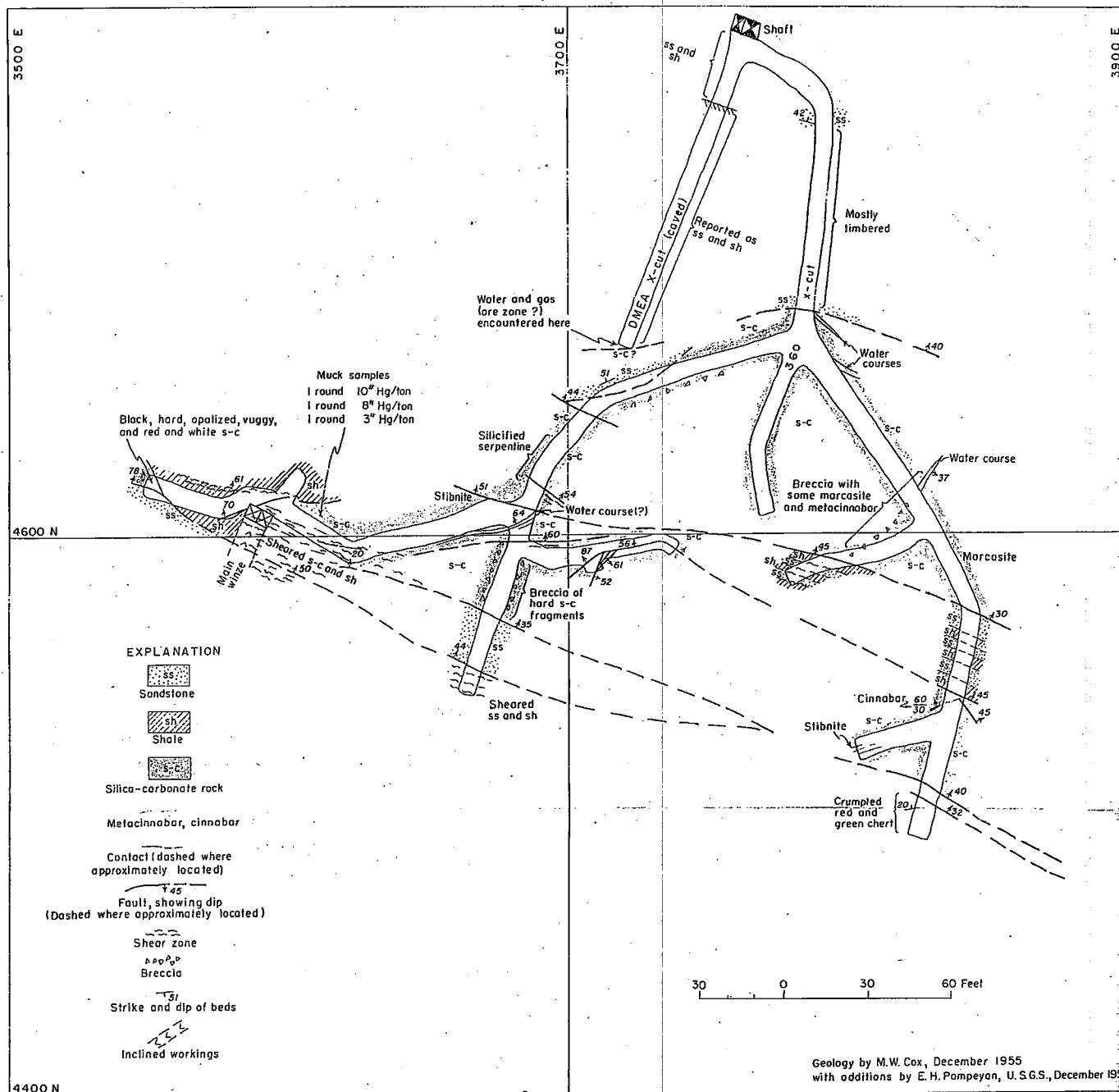


Figure 3. GEOLOGIC PLAN OF 360 LEVEL, MT DIABLO QUICKSILVER MINE
CONTRA COSTA COUNTY, CALIFORNIA